

SENATE BILL No. 517

DIGEST OF INTRODUCED BILL

Citations Affected: IC 16-39-1-10; IC 22-3-5.5.

Synopsis: Medical records privacy. Provides that an employee has the right to examine and receive a copy of the employee's medical records. Provides a mechanism by which an employee may request and provide corrections to the employee's medical records. Requires that an entity possessing an employee's medical records not collect, use, or disclose the employee's personal health information except under certain circumstances. Provides circumstances under which an entity possessing an employee's medical records may disclose the information contained in the medical records without the employee's consent. Requires the entity to keep a record of each disclosure for five years. Provides circumstances under which an entity possessing an
(Continued next page)

Effective: July 1, 1999.

Bowser

January 19, 1999, read first time and referred to Committee on Pensions and Labor.

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Digest Continued

employee's medical records may disclose information contained in the medical records to a research organization without the employee's consent. Provides specific civil penalties and criminal penalties that apply to an entity possessing an employee's medical records or to a research organization that knowingly or intentionally obtains an employee's personal health information or discloses an employee's personal health information to another person for reasons other than those provided by law.

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Introduced

First Regular Session 111th General Assembly (1999)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 1998 General Assembly.

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SENATE BILL No. 517



A BILL FOR AN ACT to amend the Indiana Code concerning labor and industrial safety.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 16-39-1-10 IS ADDED TO THE INDIANA CODE
- 2 AS A **NEW SECTION** TO READ AS FOLLOWS [EFFECTIVE JULY
- 3 1, 1999]: **Sec. 10. In addition to the provisions of this article**
- 4 **relating to the privacy of medical records in general, the provisions**
- 5 **of IC 22-3-5.5 apply to the privacy of an employee's medical**
- 6 **records in worker's compensation cases.**
- 7 SECTION 2. IC 22-3-5.5 IS ADDED TO THE INDIANA CODE
- 8 AS A **NEW CHAPTER** TO READ AS FOLLOWS [EFFECTIVE
- 9 JULY 1, 1999]:
- 10 **Chapter 5.5. Worker's Compensation: Medical Records Privacy**
- 11 **Sec. 1. The provisions of this chapter apply in addition to the**
- 12 **provisions relating to the privacy of medical records under**
- 13 **IC 16-39.**
- 14 **Sec. 2. (a) The definitions in this section apply throughout this**
- 15 **chapter.**



1 (b) "Employee" means the:

- 2 (1) individual covered by this article; or
 3 (2) individual's attorney or authorized union representative
 4 if the attorney or union representative has been given written
 5 authorization by the employee to act on the employee's behalf.

6 (c) "Personal health information" or "medical records" means
 7 information about an employee that relates to the following:

- 8 (1) The employee's health or health care history, including
 9 genetic information about the employee.
 10 (2) Provision of health care to the employee.
 11 (3) Payment for health care provided to the employee.

12 The term includes any identifying information that is collected in
 13 the course of the providing or paying for health care for the
 14 employee.

15 (d) "Trustee" means:

- 16 (1) a health care professional;
 17 (2) a health care facility;
 18 (3) a worker's compensation agency;
 19 (4) an employer (as defined in IC 22-3-6-1(a)); or
 20 (5) a health services agency;

21 that collects or maintains personal health information.

22 Sec. 3. Whenever an employee is represented by an attorney or
 23 authorized union representative, a notice or copy required to be
 24 provided to the employee under this chapter must also be provided
 25 to the employee's attorney or authorized union representative.

26 Sec. 4. An employee has a right, on request, to examine and
 27 receive a copy of the employee's personal health information that
 28 is maintained by a trustee.

29 Sec. 5. For purposes of accuracy or completeness, an employee
 30 may request, in writing, a correction of any personal health
 31 information that the employee believes is inaccurate.

32 Sec. 6. (a) A trustee who fails to make a requested correction
 33 under section 5 of this chapter to an employee's personal health
 34 information within thirty (30) days after receiving the request
 35 must:

- 36 (1) notify the employee in writing; and
 37 (2) state one (1) or more reasons for the refusal.

38 (b) An employee who receives a notification under subsection (a)
 39 may file a statement of disagreement that includes the following:

- 40 (1) A description of the correction requested.
 41 (2) The reason for the correction.

42 (c) Upon receiving a statement described in subsection (b), the

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1 trustee must add the statement to the employee's medical record.

2 **Sec. 7. (a) A trustee shall:**

3 (1) not collect, use, or disclose personal health information
4 about an employee unless the information is for a lawful
5 purpose connected with a function or activity of the trustee;
6 and

7 (2) collect, use, or disclose only as much personal health
8 information about an employee as is reasonably necessary to
9 accomplish the purpose for which the personal health
10 information is collected, used, or disclosed.

11 (b) Reasons for collecting, using, or disclosing an employee's
12 personal health information include determinations of the
13 following:

14 (1) A diagnosis of the employee's condition.

15 (2) Reasonable and necessary treatment for the employee's
16 condition.

17 (3) The amount of time that the employee will be out of work.

18 (4) The relationship, if any, of the employee's condition to the
19 employee's employment.

20 (5) Any work related restrictions resulting from the
21 employee's condition.

22 (6) The kind of work for which the employee may be eligible.

23 (7) The anticipated time that the employee will be restricted.

24 (8) The permanent impairment, if any, resulting from the
25 employee's condition.

26 (c) Other personal health information may be collected, used, or
27 disclosed by the trustee only if authorized by the employee or by
28 the employee's legal representative in writing, provided that the
29 purpose for which the additional information is being sought has
30 been revealed to the employee or the employee's legal
31 representative.

32 **Sec. 8. (a) A trustee may disclose personal health information**
33 **without the consent of an employee only under the following**
34 **conditions:**

35 (1) The trustee reasonably believes that the disclosure is
36 necessary to prevent or reduce a serious and immediate threat
37 to:

38 (A) the employee; or

39 (B) public health or public safety.

40 (2) To provide a billing review organization with information
41 needed to undertake periodic reviews of claims processing
42 and payments.

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1 (3) To assist in identifying a deceased employee.

2 (4) To inform the representative or a relative of a deceased
3 employee, or any other individual the trustee considers
4 reasonable to inform under the circumstances, of the
5 employee's death.

6 (5) To conduct a peer review by health professionals.

7 (6) The disclosure is required by law for law enforcement
8 purposes.

9 (b) A trustee may disclose information under subsection (a) only
10 to the extent the recipient needs to know the information.

11 (c) A trustee shall keep a record of all disclosures made under
12 this section for five (5) years.

13 **Sec. 9. (a)** A trustee may disclose an employee's personal health
14 information without the employee's consent to research
15 organizations conducting scientific, medical or public policy
16 research.

17 (b) A trustee shall keep, for five (5) years after disclosing an
18 employee's personal health information under subsection (a), a
19 record of the research organizations to which the trustee discloses
20 protected personal health information.

21 (c) A trustee shall not disclose protected personal health
22 information to a research organization unless the research
23 organization agrees not to disclose the protected personal health
24 information to a third person.

25 (d) A trustee shall disclose only the minimum data necessary to
26 conduct the intended research.

27 (e) The trustee shall disclose protected personal health
28 information only when the information is necessary to conduct the
29 research.

30 **Sec. 10.** A research organization shall execute an agreement
31 with the trustee that contains the following:

32 (1) A provision that it is unreasonable or impractical for the:

33 (A) person proposing the research; or

34 (B) trustee;

35 to obtain consent from an employee regarding the employee's
36 personal health information.

37 (2) A requirement that the research project contain the
38 following:

39 (A) Reasonable safeguards to protect the confidentiality
40 and security of personal health information.

41 (B) Procedures to destroy the information or remove all
42 identifying information at the earliest opportunity

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- 1 consistent with the purposes of the project.
- 2 (3) A provision that the personal health information requested
- 3 will not be published in a form that could reasonably identify
- 4 the employees concerned.
- 5 (4) A provision that the personal health information requested
- 6 will be used only for the purposes of an approved research
- 7 project.
- 8 (5) A provision that all individual identifiers will be removed
- 9 before the publication or release of the research project.
- 10 Sec. 11. (a) The penalties described in subsection (b) apply to a
- 11 trustee or research organization that knowingly or intentionally:
- 12 (1) obtains personal health information relating to an
- 13 employee; or
- 14 (2) discloses personal health information to another person;
- 15 in violation of this chapter.
- 16 (b) Except as provided in subsections (c) and (d), a person
- 17 described in subsection (a):
- 18 (1) commits a Class A misdemeanor; and
- 19 (2) in addition to any fine imposed under subdivision (1), may
- 20 be assessed a civil penalty by the worker's compensation
- 21 board of not more than fifty thousand dollars (\$50,000).
- 22 (c) If a violation of this chapter is knowingly or intentionally
- 23 committed under false pretenses, the person committing the
- 24 violation:
- 25 (1) commits a Class C felony; and
- 26 (2) in addition to any fine imposed under subdivision (1), may
- 27 be assessed a civil penalty by the worker's compensation
- 28 board of not more than two hundred fifty thousand dollars
- 29 (\$250,000).
- 30 (d) If a violation of this chapter is knowingly or intentionally
- 31 committed with the intent to sell, transfer, or use personal health
- 32 information for commercial advantage, personal gain or malicious
- 33 harm, the person committing the violation:
- 34 (1) commits a Class B felony; and
- 35 (2) in addition to any fine imposed under subdivision (1), may
- 36 be assessed a civil penalty by the worker's compensation
- 37 board of not more than five hundred thousand dollars
- 38 (\$500,000).
- 39 (e) In the case of a person described in subsection (a), the civil
- 40 penalties described in subsections (b) through (d) shall be doubled
- 41 for every subsequent violation of this chapter.

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